

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH: NAGPUR

WRIT PETITION NO. 1126/2007

Durgabai Ukey ..vs.. Education Officer & 2

WITH

WRIT PETITION NO.463/2006

Ku. Panchfula Maroti Bagade ..vs.. Education Officer

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Mr. A. M. Parchure, Advocate for petitioner [W.P.1126/2006]
Mr.N.S. Adbe, Advocate for petitioner [W.P. 463/2006]
Mrs. Joshi & Mr. Fulzele, A.G.P. for respondent no.1 in respective petitions.
Mr. A.D. Mohgaonkar, Advocate for respondent no.2 in both petitions

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CORAM: A.M. KHANWILKAR & S.R. DONGAONKAR, JJ.

DATE: 17.6.2008

P.C.

Heard counsel for the parties.

Perused the pleadings and relevant documents on record. The question whether the petitioners were in fact appointed as employees of the respondent – school, is a disputed question of fact. For the petitioners assert on affidavit that they were in fact appointed. Whereas, the management has denied their claim. The petitioners are not in a position to produce even a tittle of evidence, particularly documentary evidence to substantiate their claims.

The management was called upon to produce the

documents in their possession, if any, in relation to the appointment of the petitioners. The respondent no.2 and 3 on affidavit, sworn by Chilbuldas Bapuji Shyamkuwar, Secretary of the respondent no.2 – Society, have categorically stated that no document pertaining to the appointment of the petitioners is traced in the office.

Learned counsel for the petitioners heavily relied on the approvals granted by the Education Officer at pages 29, 31 and 33 to contend that at one stage the Education Officer approved the appointments of the petitioners. According to respondents no.2 and 3, that was at the instance of the other faction in the society which wrongly asserted to be in control of the management of the society, which will be of no avail to the petitioners. Once again that is a matter which will have to be addressed in appropriate proceedings.

Learned counsel for the respondents no.2 and 3 points out that the father of the petitioner in Writ Petition No.1126/2006 claimed to be the President, belonging to the other faction. Even for this reason, it will not be safe to decide the matter on the basis of affidavits filed by the respective parties. Instead, all such issues will have to be addressed in an appropriate proceeding.

In other words, the case made out by the petitioners will have to be decided only in the context of word against word. That being a disputed question of fact, it can not be examined in exercise of writ jurisdiction. The petitioners, if so advised, may take recourse to such other remedy as may be permissible by law, which will have to be decided on its own merits. This opinion is not an expression

on the issue that the claim of the petitioners is well within time.

Accordingly, both these petitions are disposed of in the above terms.

smp. JUDGE JUDGE